



## ***Land Use and Zoning Meeting Minutes***

*July 23, 2015*

STAFF:	David Radachy
DATE:	July 24, 2015

The Land Use and Zoning Committee hereby finds and determines that all formal actions were taken in an open meeting and that all deliberations of the Land Use and Zoning Committee, which resulted in formal action, were taken in a meeting open to the general public, in full compliance with applicable legal requirements of Section 121.22 of the Ohio Revised Code.

The meeting was called to order at 6:30 p.m.

Attendance was taken by sign-in sheet. The following members were present: Messrs. Falcone, Klco, Terriaco and Welch and Ms. Diak. Staff: David Radachy and Monica Jordan.

Mr. Radachy stated that there is one text amendment.

### **Madison Township – Text Amendment, adding definitions for viticulture and winery to Section 101 and adding winery as accessory use to Sections 104, 105 and 122.**

Staff stated that Madison Township is proposing the addition of definitions for viticulture and winery to Section 101, Definitions, and winery as a use in Sections 104.1 (A-1, Agriculture), 105.1 (A-R, Agriculture Residential) and 122.2 (S-1, Green Area). With these additions, Madison Township also proposes the renumbering of sections.

There have been issues developing over the years for wineries within Madison Township. Staff stated that there are two types of wineries that are operating in Madison Township. One type includes traditional wineries that grow grapes, make wine, and sell it. These wineries are typically small with a tasting room only. The other type of winery includes larger wineries that are operating restaurants, wedding halls, retail shops, and other non-agricultural uses. Both types are permitted in residential districts due to agricultural exemption.

Staff explained that Madison Township is seeking to regulate larger wineries without impeding the tourism that wineries attract to the Township, and by respecting agriculture rights of property owners. The Township also has the duty to protect all residents of Madison Township. To do so, the Township is redefining smaller wineries as viticulture and larger wineries as wineries. They are only seeking to regulate the non-agricultural uses of wineries, and are not proposing additional regulations for smaller wineries.

Staff stated that the Madison Township Comprehensive plan discuss this issue. It stated "Permit agritourism-related businesses, such as bed and breakfast inns, tours, commercial hay rides, u-pick operations, corn mazes as accessory uses to working agricultural uses, to allow such uses to remain economically viable in the face of exurban development. Ensure that zoning regulations do not restrict agrotourism-related businesses." It recommends removing barriers in the zoning resolution that prohibit agritourism-related land uses and it states that wineries are noted in the plan as being the most visible agritourism use in Madison Township.

Staff agrees that further regulation of larger wineries with accessory uses needs to be administered to protect the residents of Madison Township. The staff voiced concerns about the following: ORC 519.21 (A) confers "no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture."

Staff stated that there is no definition for live entertainment, microbrewery, outdoor recreational activities, outdoor dining or distillery in Section 101. Staff expressed concern regarding outdoor recreation. If left undefined, outdoor recreational activities could be interpreted to include camping, shoot gun ranges, paint ball and ATVs. The committee asked how hot air balloons would fall into the use of outdoor recreation. Staff stated that this activity is usually conducted by an operator unrelated to the winery and comes and goes off the site. It would be difficult to enforce, as zoning inspectors do not operate on weekends.

Staff also stated that there is no definition for party rooms, but there is a definition for meeting/banquet facility that may be substituted. The revision of the winery definition will be required if a new use is added ahead of winery in sections 104, 105 and 122 of the zoning resolution. This amendment is placing wineries ahead of other uses. If the Township adds another use and places it ahead of the wineries, it would cause the numbering to be off in the definition and require another amendment to ensure that all modified text correspond to other sections.

Recommend approval with the following modifications

- Viticulture: The agriculture practice of growing grape vines and grapes. This includes making and selling of wine (as per ORC 519.21 A) and the production of other grape-related products including but not limited to jam, jelly, vinegar, oil and juice.
- Winery: A commercial business establishment that is accessory to the main use of the property is primarily used for the agricultural use of growing of grape vines and grapes, and the vinting and selling of wine as per ORC 519.21 (A). A winery may be allowed to have additional uses such as, but limited to a retail establishment (small), a restaurant (Table Service), live entertainment, microbrewery, microdistillery, and/or meeting/banquet facility. (Outdoor recreational activities is recommended to be removed from the definition and distillery changed to microdistillery are changes to the definition by staff)
- Outdoor dining: A designated area adjacent to a dining establishment to be used for purposes of food and drink consumption, including table service.
- Live entertainment: Scheduled performances during which the performer(s) and audience are physically present at the time of the performance. Performances may include: theatrical productions, concerts, karaoke, literature readings, dancing, comedy, magicians, or DJs.
- Microbrewery: An establishment where beer, ale, etc. are brewed in conjunction with a bar, tavern, or restaurant use. The maximum brewing capacity shall not exceed 15,000 gallons per year.

- Microbrewery (Accessory): An agricultural, subordinate use to a Winery. This use brews beer, ale, etc. as an agriculture product and may have an on-site tasting room and retail space to sell the products. This use will be in conformance with ORC 519.01.
- Microdistillery: A facility that produces distilled spirits in quantities not to exceed 30,000 gallons per year. An on-site tasting room and retail space to sell products made on-site may be located within the building.
- Microdistillery (Accessory): An agricultural, subordinate use to a Winery. This use distills spirits as an agriculture product and may have an on-site tasting room and retail space to sell the products. This use will be in conformance with ORC 519.01.
- Tasting Room: A room attached to a microbrewery, distillery, or winery that allows patrons to consume wine, beer, and other alcoholic beverages produced on site.
- 104.1.7, 105.1.7, 122.2.12 and 122.5.6: Winery, whose buildings and structures are used primarily for vinting and selling of wine and that are located on land of which any part is being used for viticulture as permitted by Ohio law in conformance with ORC 519.21(A) and has one acre of land planted with grape vines and grapes.

Winery may have accessory uses of retail establishment (small), a restaurant (Table Service), live entertainment, microbrewery, microdistillery, and/or meeting/banquet facility. But these uses shall be subordinated to the viticulture.

This use shall conform to off street parking requirements in Section 127.5.5 (Restaurant, Table Service). Signs shall be in conformance with the requirements of Section 128.2.1.

The committee was concerned about the one acre requirement for grapes, questioning if one acre is enough to be considered agriculture. Staff expressed concern that there is the requirement for one acre of grapes, as well as land immediately adjacent to the winery in the definition of winery. Staff is concerned that this requirement may not be in conformance with ORC 519.01 and 519.21. The Ohio Supreme Court has ruled that making wine is an agriculture use (Terry v Sperry in Mahoning County). The definition of viticulture will keep the Township compliant to the ORC. Having a requirement of growing grapes on one acre in order to have additional uses should not infringe on agricultural exemption, as this is not an agriculture issue. The law allows for selling of wine. The Township is seeking to regulate the non-agricultural uses of restaurants, meeting facilities, retail space, etc. It took a while for staff to come to grips with tying non-agriculture uses with agriculture, but in staff's mind, the Township is within their rights because they are not regulating agriculture.

Mr. Klco discussed said this issue relates directly to the Swiss House, an establishment that was originally a recreation facility, but continued to add uses to eventually become a restaurant. It caused hardship for the Township, but the Township was eventually able to bring them into compliance (just in time for them to go out of business). These regulations are also meant to control a new winery that is starting up on Bates Road.

Mr. Klco made the motion to recommend the text amendment with staff's modifications.  
Ms. Diak seconded the motion.

Mr. Radachy asked if there was any discussion. He asked the committee about the one acre rule. The Committee stated it was comfortable with the one acre rule.

All voted "Aye".  
Motion passed.

There was no other business. There was no public comment. The meeting adjourned at 6:55 p.m.